

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROMAN S. FERBER and STEPHEN CHUNG

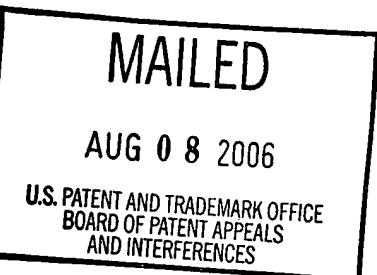
Application No. 09/833,401

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences (BPAI) on August 4, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are outlined below:

ARTIFACT

On August 4, 2006, a request for Artifact No. 09833401CA was made via the appropriate USPTO personnel. A response to the request revealed that the Artifact could not be located (PALM location as of August 4, 2006 states that the Artifact is housed



in 3700 Central Files since May 10, 2004). The Examiner must resolve this situation of the missing Artifact and supply it to the BPAI for further processing of the Appeal.

APPEAL BRIEF

The Appeal Brief received at the USPTO on June 23, 2005, uses headings that are pertinent to 37 CFR § 1.192(c). The rules changed on September 13, 2004, therefore the headings and content need to be updated to reflect that which are currently in use. **See** 37 CFR § 41.37(c). In addition, the Appeal Brief has the following matters that require correction. They are outlined below:

The content under the heading "**SUMMARY OF THE INVENTION,**" (which should be labeled --**SUMMARY OF CLAIMED SUBJECT MATTER--**) present in the Appeal Brief fails to meet the criteria set forth in 37 CFR § 41.37(c)(1)(v).

37 CFR § 41.37(c)(1)(v) states:

A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. [§] 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and

line number, and to the drawing, if any, by reference characters.

The "**SUMMARY OF THE INVENTION**" is deficient for it does not map the independent claims to the specification. Further review of the Appeal Brief indicates that two required headings are missing, they are:

- (1) the "**EVIDENCE APPENDIX**," as set forth in 37 CFR § 41.37(c)(1)(ix); and
- (2) the "**RELATED PROCEEDINGS APPENDIX**," as set forth in 37 CFR § 41.37(c)(1)(x).

Correction is required with respect to the above-mentioned matters.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to resolve the location situation surrounding Artifact **09833401CA**, and to supply it to the BPAI for further processing of this appeal;
- 2) to have Appellants submit a revised Appeal Brief that complies with the headings and content as outlined in 37 CFR § 41.37(c);
- 3) to include in the revised Appeal Brief the appropriate content under the properly labeled heading "**SUMMARY OF**

CLAIMED SUBJECT MATTER," and to also supply the missing appendices as required by 37 CFR § 41.37(c)(1)(ix) and 37 CFR § 41.37(c)(1)(x); and

4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



DALE M. SHAW
Deputy Chief Appeal Administrator
(571) 272-9797

*Kevin J. Heinl
Brooks & Kushman P.C.
22nd Floor
1000 Town Center
Southfield, MI 48075-1351*

DMS/hh